IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 855 OF 2003

Hanmant Bapusaheb Dhumal..... Appellant.

Versus

Baban Bajirao Darekar..... Respondent.

Mr. P. J. Shinde for the Appellant.

Ms. Aniketa Aher i/by Mr. S. Pawar
for the Respondent.

CORAM : A. S. OKA, J.

DATED : 21ST APRIL, 2005.

P.C.:

Heard advocates appearing for the parties.

2. Shri Shinde, learned advocate appearing for the appellant, submitted that the original plaintiff ought not to have been permitted to lead secondary evidence of Deed of Mortgage by producing a certified copy thereof as the original plaintiff never called upon the appellant / defendant to produce the original Deed of Mortgage. He submitted that as the original plaintiff could not have led secondary evidence in respect of the alleged document of mortgage, the suit

ought to have been dismissed. He submitted that the appellant / defendant had placed on record of the trial court documents evidencing that the appellant had paid a sum of Rs.1,31,000/- for improvement made on the said land and the appellate court has not considered the said documentary evidence.

3. I have considered the submissions of Shri Shinde. The appellate court has recorded a finding that the appellant has categorically stated in his evidence that on 12th April, 1982 he went to the office of the Sub-Registrar and executed a Deed of Mortgage in favour of the respondent / plaintiff. The appellate court has noted that the case made out by the appellant / defendant was that on 12th April, 1982 there was an oral talk regarding sale of the suit land but due to some technical difficulty a mortgage deed was executed. Thus the appellate court held that the execution of registered document on 12th April, 1982 was not disputed by the appellant. The appellant did not show willingness to produce original document. In the circumstances, no fault can be found with the trial court if the original plaintiff was permitted to lead secondary evidence of the document. Only dispute which was raised by the appellant / defendant was that

the real nature of the transaction was sale and not mortgage and there is no dispute as regards the execution of the document.

4. In so far as case of the appellant / defendant of carrying out improvement is concerned, the trial court has dealt with documentary evidence produced on record by the appellant and discarded the case made out by the appellant by giving detailed reasons. It is true that the appellate court has not referred to the documentary evidence on record but the appellate court has expressed general agreement with the finding recorded by the trial court on that aspect. The appellate court has also held that the terms of Deed of Mortgage did not permit the appellant to carry out improvement and the improvement has been allegedly carried out without the permission of the respondent / plaintiff.

5. In this view of the matter, there is no substantial question of law involved in this second appeal. The second appeal is dismissed with no order as to costs.

4. Parties to act on the authenticated copy of this

order.

Sd/-

(A. S. OKA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1298 OF 2003

IN

SECOND APPEAL NO. 855 OF 2003

Hanmant Bapusaheb Dhumal..... Appellant.

Versus

Baban Bajirao Darekar..... Respondent.

Mr. P. J. Shinde for the Appellant.

Ms. Aniketa Aher i/by Mr. S. Pawar
for the Respondent.

CORAM : A. S. OKA, J.

DATED : 21ST APRIL, 2005.

P.C.:

In view of the dismissal of the second appeal, this civil application does not survive. Hence rejected.

Sd/-

(S. A. OKA, J.)